



**MINUTES  
FREMONT PLANNING COMMISSION  
REGULAR MEETING OF FEBRUARY 24, 2005**

CALL TO ORDER: Chairperson Harrison called the meeting to order at 7:00 p.m.

PRESENT: Chairperson Harrison, Commissioners Chan, Lorenz, Lydon, Sharma, and Weaver

ABSENT: Commissioner King

STAFF PRESENT: Jeff Schwob, Planning Director  
Larissa Seto, Senior Deputy City Attorney II  
Norm Hughes, City Engineer  
Massoud Abolhoda, Building and Safety Manager  
Luke Connolly, Niles Redevelopment Project Manager  
Jay Swardinski, Acting Fire Marshall and Hazard Materials Program Manager  
Scott Ruhland, Associate Planner  
Cliff Nguyen, Planner II  
Alice Malotte, Recording Clerk  
Chavez Company, Remote Stenocaptioning  
Walter Garcia, Video Technician

APPROVAL OF MINUTES: Regular Minutes of January 27, 2005, were approved with the following change:

Page 7, Item 2, Lorenze ~~Abstained~~ Recused

**CONSENT CALENDAR**

THE CONSENT LIST CONSISTED OF ITEM NUMBERS 3, 4, 5, 7, AND 9.

IT WAS MOVED (WEAVER/SHARMA) AND UNANIMOUSLY CARRIED BY ALL PRESENT THAT THE PLANNING COMMISSION TAKE THE FOLLOWING ACTION ON ITEM NUMBERS 3, 4, 5, 7, AND 9.

**Item 3. BAYSIDE BUSINESS PARK PGP - (PLN2004-00322)** - to consider a revision to an approved Preliminary Grading Plan for approximately 48 acres of property located at the northwest corner of Interstate 880 and Dixon Landing Road within the Industrial Planning Area. An Addendum to EIR 89-56 has been prepared and is included in the staff report.

**HOLD PUBLIC HEARING;**

**AND**

**FIND PLN2004-00322 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE CHAPTER;**

**AND**

**FIND THAT AN ADDENDUM TO THE PREVIOUSLY APPROVED FINAL ENVIRONMENTAL IMPACT REPORT 89-56 (SCH#89030071) IS APPROPRIATE FOR THE PROPOSED MINOR REVISIONS TO THE GRADING PLAN (PROJECT PLN2004-00322) AS THE REVISIONS ARE MINOR AND TECHNICAL CHANGES TO THE ORIGINAL GRADING PLAN, BUT NONE OF THE CONDITIONS DESCRIBED IN CEQA SECTION 15162 (I.E. SUBSTANTIAL PROJECT CHANGES OR NEW INFORMATION OR NEW SIGNIFICANT EFFECTS) REQUIRING THE PREPARATION OF A SUBSEQUENT EIR HAVE OCCURRED. FIND THAT THE DECISION TO PREPARE AN ADDENDUM REPRESENTS THE INDEPENDENT JUDGEMENT OF THE CITY OF FREMONT;**

**AND**

**APPROVE PLN2004-00322, AS SHOWN ON EXHIBIT "A", SUBJECT TO FINDINGS CONTAINED WITHIN THIS REPORT AND CONDITIONS ON EXHIBIT "B".**

- Item 4. BAYSIDE BUSINESS PARK – West Warren Avenue – (PLN2005-00085) – to consider a City Manager's report on an Annual review of Development Agreement DA-92-1 (Bayside Business Park Phase II). (PLN2000-00167, PLN2002-00006, PLN2002-00332, PLN2004-00071, TR 6591, GP-92-11, EIA-89-56, and DA-92-1) for a property located at the northwest corner of Interstate 880 and Dixon Landing Road within the Industrial Planning Area. This review of this Development Agreement is exempt under Article 5, Section 15061(c)(3) of the California Environmental Quality Act (CEQA) in that the activity is not defined as a "project" under the adopted guidelines.**

**HOLD PUBLIC HEARING;**

**AND**

**FIND THE REVIEW OF THIS DEVELOPMENT AGREEMENT IS EXEMPT UNDER ARTICLE 5, SECTION 15061(C)(3) OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) IN THAT THE ACTIVITY IS NOT DEFINED AS A "PROJECT" UNDER THE ADOPTED GUIDELINES;**

**AND**

**FIND ON THE BASIS OF SUBSTANTIAL EVIDENCE THAT THE PROPERTY OWNER HAS COMPLIED IN GOOD FAITH WITH THE TERMS AND CONDITIONS OF THE DEVELOPMENT AGREEMENT FOR THE PERIOD UNDER REVIEW.**

- Item 5. CATELLUS DEVELOPMENT CORPORATION – Pacific Commons Development Agreement – (PLN2005-00004) – to consider a City Manager's report on the annual review of the development agreement for property generally located westerly of Interstate 880 between Auto Mall Parkway and Cushing Parkway in the Industrial Planning Area. An EIR and Supplemental EIR ('SEIR') were previously approved for the Pacific Commons project. An Addendum to the SEIR was prepared and adopted for the Planned District Major Amendment (PLN2003-00166) finding the project to be consistent with the original plan and environmental documents. This review is not a project as defined in the CEQA Guidelines, Section 15378, no further action is required.**

**HOLD PUBLIC HEARING;**

**AND**

**FIND THE ANNUAL REVIEW OF THE DEVELOPMENT AGREEMENT IS NOT A PROJECT DEFINED IN CEQA GUIDELINES SECTION 15168 AND THAT NO FURTHER ENVIRONMENTAL DOCUMENTATION IS NEEDED FOR THIS REVIEW;**

**AND**

**FIND AND DETERMINE ON THE BASIS OF SUBSTANTIAL EVIDENCE IN THE RECORD OF THE PROCEEDINGS, THAT FOR THE REVIEW PERIOD JUNE 1, 2003 TO MAY 31, 2004, THE DEVELOPER HAS GENERALLY COMPLIED WITH ITS OBLIGATIONS UNDER THE 2000 AMENDED AND RESTATED DEVELOPMENT AGREEMENT BETWEEN THE CITY OF FREMONT AND CATELLUS DEVELOPMENT CORPORATION FOR THE PACIFIC COMMONS PROJECT.**

- Item 7. **DENSITY BONUS AMENDMENTS – Citywide – (PLN2005-00151)** - to consider a City-initiated General Plan Amendment, Zoning Text Amendment and EIA to amend current City Density Bonus regulations to comply with recent changes to state law. A Negative Declaration has been prepared and circulated for this project.

**HOLD PUBLIC HEARING;**

**AND**

**RECOMMEND THAT THE CITY COUNCIL FIND THE INITIAL STUDY CONDUCTED FOR THE PROJECT HAS EVALUATED THE POTENTIAL IMPACTS THAT COULD CAUSE AN ADVERSE EFFECT, EITHER INDIVIDUALLY OR CUMULATIVELY, ON WILDLIFE RESOURCES AND FIND THAT THERE IS NO EVIDENCE THE PROJECT WOULD HAVE ANY POTENTIAL FOR ADVERSE EFFECT ON WILDLIFE RESOURCES. AS A RESULT, RECOMMEND THE FILING OF A CERTIFICATE OF FEE EXEMPTION FOR THE PROJECT;**

**AND**

**RECOMMEND TO THE CITY COUNCIL THE ADOPTION OF DRAFT NEGATIVE DECLARATION FINDING THAT THERE IS NO SUBSTANTIAL EVIDENCE THAT THE PROJECT WILL HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT AND FURTHER FIND THAT THIS ACTION REFLECTS THE INDEPENDENT JUDGMENT OF THE CITY OF FREMONT;**

**AND**

**FIND THAT THE PROJECT IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE AND HOUSING CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;**

**AND**

**FIND THE PUBLIC NECESSITY, CONVENIENCE AND GENERAL WELFARE REQUIRE THE ADOPTION OF THIS ZONING TEXT AMENDMENT (PLN2005-00151) SO THAT PORTIONS OF THE FREMONT MUNICIPAL CODE DEALING WITH DENSITY BONUS REGULATIONS ARE CONSISTENT WITH RECENT CHANGES TO STATE LAW;**

**AND**

**RECOMMEND TO COUNCIL APPROVAL OF PLN2005-00151 TO AMEND THE GENERAL PLAN LANGUAGE FOR THE PROJECT IN CONFORMANCE WITH EXHIBIT "A" (GENERAL PLAN AMENDMENT EXHIBIT);**

**AND**

**RECOMMEND PLN2005-00151 TO THE CITY COUNCIL IN CONFORMANCE WITH EXHIBIT "B" (ZONING TEXT AMENDMENT).**

- Item 9. **KAISER FARMERS' MARKET – 39400 Paseo Padre Parkway - (PLN2005-00091)** – to consider a Conditional Use Permit to allow the weekly operation of a certified Farmers' Market on the Kaiser Permanente Medical Center property located in the Central Planning Area. This project is categorically exempt from CEQA per Section 15301; Existing Facilities.

**ADDENDUM TO THE REPORT**

The question has been raised about the number of vendors the market ultimately plans to have. Depending on the season, there will be approximately 6-8 vendors. Products consist of fresh cut flowers, orchids, vegetables (1-2), fruits (1-2), and breads.

**Commissioner Sharma** noted that on page 2, it seemed that the market could have different hours other than what was stated. He asked if rescheduling would include the time or the day of the market.

**Kim Graves**, Service Director for Kaiser Permanente, stated that the time would be from 10:00 a.m. to 2:00 p.m. on Thursdays, as noted.

HOLD PUBLIC HEARING;

AND

FIND PLN2005-00091, AS PER EXHIBIT "A" (SITE PLAN) IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE CHAPTER AS ENUMERATED WITHIN THE STAFF REPORT. FIND THAT THE PROJECT CONFORMS TO THE GOALS AND OBJECTIVES OF THE CENTRAL BUSINESS DISTRICT;

AND

FIND PLN2005-00091 IS CATEGORICALLY EXEMPT FROM FURTHER ENVIRONMENTAL REVIEW PURSUANT TO CEQA GUIDELINES SECTION 15301 RELATED TO ALTERATIONS TO EXISTING FACILITIES;

AND

APPROVE PLN2005-00091, AS SHOWN ON EXHIBIT "A" AND SUBJECT TO FINDINGS AND CONDITIONS ON EXHIBIT "B".

The motion carried by the following vote:

AYES:	6 – Chan, Harrison, Lorenz, Lydon, Sharma, Weaver
NOES:	0
ABSTAIN:	0
ABSENT:	1 – King
RECUSE:	0

## **PUBLIC COMMUNICATIONS**

### **ORAL COMMUNICATIONS**

### **PUBLIC HEARING ITEMS**

- Item 1. **FOSTER RESIDENCE MODIFICATIONS – 304 Castro Lane – (PLN2005-00013)** – to consider a Planned District Minor Amendment to modify approved architectural details of exterior alcoves, openings, terraces and associated landscaping for an existing detached single-family dwelling under construction in the Mission San Jose Planning Area. The proposed project is exempt from CEQA review under Section 15301. (Continued from January 27, 2005)

#### **ADDENDUM TO GRADING DISCUSSION IN REPORT**

***Revised Preliminary Grading Plan:*** The project civil engineer submitted a revised preliminary grading plan on February 22, 2005. The revised preliminary grading plan will be posted in the Commission chambers and included as part of Exhibit "A". This revised plan replaces the grading plan that was included in the Commission's packets. The grading plan has been revised to include the following additional information:

- A dashed line labeled "30% slope line [1]," which identifies the thirty percent (30%) slope boundary.
- Note [1] that states the "30% slope line" is based upon pre-project topography and was computer generated.

***Thirty Percent (30%) Slope Analysis:*** The "30% slope line" delineated by the project civil engineer does not exactly match the 30% slope boundary estimated by staff. Staff is not sure what "pre-project topography" was used by the project civil engineer, but based upon review

*of the existing elevation contours on the building permit and grading permit plans, staff estimates that the 30% slope envelope extends further downhill on the western side of the house to approximately the 190-foot elevation contour. The slope boundary then extends uphill and approximately follows the 200-foot elevation contour behind the house. The revised preliminary grading plan has been annotated to show staff's estimate of the 30% slope boundary. The revised information does not change staff's recommendation regarding the grading modifications.*

**Letters From and Discussions with Project Consultants:** *In addition to reviewing the revised grading plan, staff has talked with the project civil engineer, Mr. Frank C. Bellecci P.E., the project foundation and grading inspector, Mr. Frank Lee P.E. (Civil), and the grading subcontractor, Mr. Butch Ripley. The letters are included as informational attachments and are discussed in the Grading/Topography section of this report. However, because Mr. Lee and Mr. Ripley were not listed on the application as consultants, staff requested contact information from the applicant. On February 23, 2005, staff spoke separately via telephone with both Mr. Lee and Mr. Ripley.*

*Mr. Ripley's letter, dated January 20, 2005, states that "the approved plans was in contradiction to the existing hill conditions...The approved area was not practical as it left no where to provide proper drainage from the hill slope to the back of the home." When asked by staff, Mr. Ripley did not provide information to demonstrate any problems with the drainage design permitted in September 2000.*

*Mr. Lee's letter, dated January 20, 2005, states "In my opinion, the rear of the home did not incorporate sufficient area to allow for proper drainage." His letter goes on to state "Widening the area by five additional feet allowed Mr. Foster to install a more efficient retaining wall and v-ditch." According to Mr. Lee, he provides foundation inspection, grading inspection, and drainage inspection, for the applicant. Mr. Lee is neither the project civil engineer-of-record or project geotechnical engineer-of-record. When asked, Mr. Lee did not provide any analysis or other information to support his statements regarding the insufficient area for proper drainage and how the retaining wall and v-ditch were "more efficient."*

**Roger Shanks**, consultant, asked if the Commissioners had visited the project. He stated that his clients had assumed that the project superintendent had received approval for the improvements, which was not true and that person was no longer employed with the company. For approximately six months, they had been working with staff to resolve the issues and they asked that they be allowed to move forward with the project, as they were currently living in a hotel. They agreed with staff concerning the changes in architecture, except Condition A-10, the height of the front door entry feature. The rear retaining wall should stay because, in their opinion, if it were closer to the house, it would have to be keyed into the slope in order to backfill behind the wall. The wall was a pier wall rather than a foundation wall, which made it more stable, and it encroached into the 30 percent sloped approximately six inches, which was minor in nature and it made the current j-ditch more efficient. The height of the wall at the western corner of the home was approximately three feet. It tapered down on both sides and was not visible from any other properties. The projecting rear porch and terrace should be retained to allow exit from the second floor of the home.

**Commissioner Chan** asked who the actual general contractor was for this project. She understood that wheelchair access from the exterior of the home was being addressed. However, she had not seen wider doorways or other signs of design changes that would accommodate a wheelchair, and she asked if the construction of the interior would be allowed as originally planned. She asked if, when the back slope was graded, where the displaced dirt had been relocated, as she had noticed fresh dirt at the northwest portion of the house and she wondered if it had been packed.

**Consultant Shanks** replied that the applicant, Foster Construction, was his own contractor. The residence was designed and started without handicapped accessibility. During construction, the applicant's mother had a stroke and as much as possible had been changed to make it more accessible by wheelchair. The main level of the home was flat and the stairs at the rear of the home, as shown on the plans, would be a straight landing. They planned to build another home in approximately three years with elevators that would better accommodate the applicant's mother and her disabilities. Some of the displaced dirt was hauled off site and some was used for re-contouring at the western end. The relocated fill had been compacted.

**Commissioner Lorenz** asked if this was the first home built by the applicant's company, as he assumed that the permitting process would be similar among local cities. He wondered why the second part of the planning process, which was getting the plans stamped and approved by the Planning Department, was missing.

**Consultant Shanks** stated that the applicant had built many homes in this city and other cities. When the walls were inspected and approved by the city building inspectors, the applicant had assumed all aspects of the walls were approved and he did not know that the location of the walls had not been approved.

**Commissioner Lydon** asked for clarification concerning the homes that the applicant had constructed in the city. He stated that he could not understand the "disconnect" between the applicant and his superintendent. He was a seasoned contractor, and he seemed to be so remote from the process, which should not have been foreign to him.

**Consultant Shanks** replied that the applicant had repaired fire-damaged homes and had built just one home in the city. The applicant had believed his superintendent, who had assured him that the approvals had been acquired. It was an unfortunate situation where he had not followed up to be sure that all approvals had been obtained.

**Commissioner Lorenz** asked how many brand new homes the applicant had built from ground up.

**Consultant Shanks** replied that the applicant had built one home, which was this one.

**Chairperson Harrison** opened the public hearing.

**Consultant Shanks** closed by admitting that unfortunate mistakes had been made by the applicant. To remove the entire retaining wall at the rear of the house would be extremely costly, because of the construction technique. The j-ditch matched the original design, which would better accommodate the runoff water from the hill. The front driveway was slightly enlarged to provide better parking.

**Chairperson Harrison** stated that the Commission had received a letter from the applicant that described his meeting with the Gearharts, which was different from an email that was received from the Mrs. Gearhart that described the same meeting. He asked the applicant to come forward to explain the difference.

**Jerry Foster**, applicant, replied that he was not present when the Gearharts visited the house. He had received his information from the men who were on the jobsite when the Gearharts visited. He understood that the Gearharts believed the encroachments were not as bad as they seemed on paper and that this was not something they would argue about. He stated that he had told them after the last hearing that the house had been built to best fit with the hill and that he had not made the encroachment mistakes on purpose.

**Chairperson Harrison** closed the public hearing.

**Commissioner Lorenz** stated that he had measured the wall when he visited the jobsite and he still questioned the location of the toe of the hill on this property. At one point, the wall was about four feet high and the hill behind had been severely cut into, which concerned him. He suggested that the wall be jogged forward at this point along the edge of the upper terrace and the hill then be backfilled to restore it to its natural state. The wall tapered to less than three feet at the other end. In his opinion, the current ten-foot walkway better served the home and the spirit of Measure T was maintained. The v-ditch could stay at its current location, which was important for drainage. The back terrace made the house architecturally more interesting and he would agree to leaving it in place.

**Commissioner Lydon** noted that Commissioner Lorenz spoke of the north side of the house where Consultant Shanks described it as the west side of the house.

**Commissioner Weaver** stated that she had no comments concerning the recommendations. However, her issue was how this situation originally arose. She stated that the applicant had probably made an honest mistake. However, she worried that someone could come before the Planning Commission in the future who had “made a less than honest mistake” and make the same request as was being made by this applicant. In her opinion, the issue was not whether the encroachment was minor, but that it should never have been made. It was not the responsibility of the Planning Commission to approve the applicant’s mistake. It was the applicant’s responsibility to go back to the person who bore the blame for the current situation. It was not wise for the Commission to set a precedent by approving something that had not been approved, did not go through the approved planning process and ended up in contravention to the current ordinances. She understood how expensive changing the encroachment would be and she sympathized with the applicant. On the other hand, she was willing to listen to compromises.

**Commissioner Chan** had concerns that caused her to pause when considering the applicant’s request. She had also built a house in the city, and she had learned that choosing a contractor who was experienced and was knowledgeable with the city’s regulations and rules was of utmost importance. “Otherwise, one would pay for it somewhere along the line . . . because they were learning on your nickel.” Twice in the City’s history, the people had voted to approve the hillside initiative and it was the City’s responsibility to enforce the regulation that made up the initiative. She wondered how the applicant could be unaware of the hillside measure, since he had bought the property with building and grading permits issued in August 2002. She echoed Commissioner Weaver’s concerns and agreed that all citizens must abide by the City’s rules and regulations.

**Commissioner Lydon** felt frustration, along with the other Commissioners. If he had visited the site without specific knowledge of what the problems were, he might not have been able to see them, as the wall looked pretty solid. He worried that dedicated city staff would be “beat up in this process.” He felt certain that others would decide to “build it, get permission later.” He was willing to listen to ideas that could rectify the problems without compromising the city’s integrity. Measure T was not a secret, and the Commission was charged with interpreting what the people of Fremont wanted.

**Commissioner Sharma** stated that staff had worked very hard with the applicant to approve certain issues while not approving the issues that conflicted with Measure T. He had also visited the site and felt the project was well built. However, in his opinion, the minor mistakes were gross negligence and the person who made the mistakes should be held accountable rather than the city being expected to accommodate those mistakes. He was willing support staff recommendation.

**Chairperson Harrison** asked if the Commission agreed with relaxing Condition A-10, as requested by the consultant, which seemed to be a reasonable request. He concurred with

Commissioner Lydon's comments. He, too, was prone to look for a compromise; however, he felt that staff had already made as many compromises as was possible. He believed that the applicant had not purposely made the mistakes at issue, but the general consensus was that as many compromises as possible had been made, already.

**Commissioner Sharma** asked if removing Condition A-10 would provide a conflict with Measure T.

**Planning Director Schwob** stated that the Commission had full purview to remove the condition.

**Commissioner Weaver** asked if there was any interest in the compromise suggested by Commissioner Lorenz.

**City Engineer Hughes** stated that the wall had been constructed within the 30 percent slope, which made it difficult for staff to support it. A portion of the wall that was in the 30 percent slope area was approved as a minor encroachment prior to the approval of Measure T. Measure T had no provision to approve the new minor wall encroachment. Concerning the upper terrace encroachment, the same issue applied.

**Commissioner Lorenz** asked if the terrace was visible from below the home.

**City Engineer Hughes** stated that it was not visible unless one made a point of looking up the driveway. However, it was not a visibility issue, but a Measure T issue.

**Commissioner Lydon** asked if the base of the portico was over the 30 percent line, which forced the entire wall over the line. What consequences could the city expect to encounter if the Commission approved the current location of the wall and upper terrace. If the applicant had asked for permission from the city to place the wall where it currently was located, was there a chance that it would have been granted?

**City Engineer Hughes** replied that Commissioner Lydon's comments had expressed staff's concerns very well. Staff certainly did not want to have to face the same request over and over. He stated that the work that was performed out of the 30 percent area would have been approved. It was unlikely that staff would have permitted any further encroachment when it came to the wall and upper terrace.

IT WAS MOVED (SHARMA/WEAVER) AND CARRIED BY THE FOLLOWING VOTE (5-1-0-1-0) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

**AND**

**REMOVE CONDITION A-10 CONCERNING THE HEAVY ARCH OPENING AT THE MAIN ENTRANCE;**

**AND**

**FIND PLN2005-00013 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN AND THE HILL AREA INITIATIVE OF 2002, MEASURE T, AS CONDITIONED;**

**AND**

**WITH REGARD TO THE APPLICANT'S PROPOSED MODIFICATIONS TO LEGALIZE THE NON-PERMITTED ARCHITECTURAL DESIGN CONSTRUCTION OF THE HOME:**

**APPROVE THE PROPOSED ARCHITECTURAL DESIGN CHANGES RELATED TO WINDOW STYLES, TERRACE RAILINGS ON FRONT OF HOME, STYLE OF OPENINGS, ADDITION OF TWO-STORY ENTRY FEATURE, CHANGE IN GARAGE DOOR STYLE AND MATERIALS, AND OTHER PROPOSED DESIGN CHANGES, SUBJECT TO CONDITIONS;**



AND

DENY THE REQUESTED MODIFICATIONS TO LEGALIZE THE NON-PERMITTED TERRACE EXPANSION, AND REQUIRE THE APPLICANT TO ENTIRELY REMOVE THE NON-PERMITTED ROOF-COVERED TERRACE STRUCTURE CONSTRUCTED ON THE REAR FAÇADE OF THE HOME ON A SLOPE OF THIRTY PERCENT (30%) OR MORE IN VIOLATION OF THE HILL AREA INITIATIVE OF 2002 (MEASURE T).

WITH REGARD TO THE APPLICANT'S PROPOSED MODIFICATIONS TO LEGALIZE THE NON-PERMITTED SITE WORK AND GRADING:

DENY THE PROPOSED MODIFICATIONS TO LEGALIZE THE NON-PERMITTED WESTERN EXPANSION OF THE DRIVEWAY PAVEMENT AND ASSOCIATED RETAINING WALLS, AND REQUIRE THE APPLICANT TO REMOVE THE NON-PERMITTED PAVEMENT AND WALLS, SUBJECT TO CONDITIONS;

AND

DENY THE PROPOSED MODIFICATIONS TO LEGALIZE THE NON-PERMITTED WIDENING OF THE WALKWAY AT THE REAR OF THE HOUSE, AND REQUIRE THE APPLICANT TO REMOVE THE NON-PERMITTED RETAINING WALL, CONCRETE V-DITCH, CONCRETE PATIO AND WALKWAY AND REQUIRE THE APPLICANT TO RESTORE THE SLOPE AND INSTALL IMPROVEMENTS IN CONFORMANCE WITH THE PREVIOUSLY APPROVED AND PERMITTED PLANS;

AND

APPROVE THE PROPOSED SITE WORK MODIFICATIONS ON THE EASTERN SIDE OF THE HOME [AN AREA NOT SUBJECT TO HILL AREA INITIATIVE OF 2002 (MEASURE T) RESTRICTIONS BECAUSE SUCH AREA IS LESS THAN A 30% SLOPE] SUBJECT TO CONDITIONS;

AND

APPROVE THE PROPOSED SITE WORK MODIFICATIONS ON THE WESTERLY SIDE OF THE HOME [AN AREA NOT SUBJECT TO HILL AREA INITIATIVE OF 2002 (MEASURE T) RESTRICTIONS BECAUSE SUCH AREA IS LESS THAN A 30% SLOPE] SUBJECT TO CONDITIONS.

The motion carried by the following vote:

AYES:	5 – Chan, Harrison, Lydon, Sharma, Weaver
NOES:	1 – Lorenz
ABSTAIN:	0
ABSENT:	1 - King
RECUSE:	0

**Chairperson Harrison** called for a recess at 7:55 p.m.

**Chairperson Harrison** called the meeting back to order at 8:05 p.m.

**Item 2.**     **NEXTEL COMMUNICATIONS – 211 Meadows Court – (PLN2004-00302)** - to consider a Zoning Administrator referral to the Planning Commission for a Zoning Administrator Permit to allow a wireless telecommunication facility consisting of 12 panel antennas and two GPS receiving antennas mounted on an existing PG&E lattice tower and the construction of a small equipment shelter located in the Mission San Jose Planning Area. This project is

categorically exempt from CEQA per Section 15303, new construction or conversion of small structures.

**Tasha Skinner**, representing the applicant, stated that 12 feet would be added to the existing PG&E tower, which would include four antennas per sector and the ancillary equipment would be installed to the northeast of the transmission tower. She read portions of a letter she had sent to staff. In summary:

- Current coverage was poor in the Mission San Area and vicinity
- Five existing structures were considered to avoid proposing construction of a tower of any kind in the historic district
- Three structures were not acceptable
- The tower at Meadows Court was chosen, because it was furthest away from residents than the other towers
- The location of the equipment shelter was chosen to be less readily visible from the neighboring property
- The wall that would screen the ground equipment would be a stucco finish to integrate into the neighborhood
- A neighborhood meeting was held to address concerns about health effects
- The project met all city zoning ordinance requirements and would comply with all SCC guidelines, including RF emissions

**William Hammet**, registered professional engineer, stated that he was experienced in the calculation, measurement and mitigation of RF exposure conditions. Detailed calculations had been made to project exposure levels and the staff report accurately reflected his findings, which was 2 percent of the standard allowed by federal law. Within 30 days after the completion of the project, someone would come back and take measurements to confirm the preliminary findings, as was required by the city.

**Dr. Peter Polson**, independent consultant, stated that he had studied the biological effects of microwave and radio frequency radiation for 32 years. He was a member of the committee who set the standards for safe exposure levels that the FCC relied upon in setting its exposure guidelines. He was available to answer questions about health effects of the proposed project.

**Chairperson Harrison** read from the staff report concerning RF guidelines and the federal law. He asked if those were the same RF guidelines that were used when the other locations were being considered. He also disclosed that he was a Nextel customer.

**Mr. Hammet** stated that his role was to evaluate a particular site for its compliance with the federal safety guidelines.

**Commissioner Sharma** asked how the total radiation was measured in the area when there were other antennas in the neighborhood. He asked if there was some kind of synergistic interaction between the power and energy sources located on the different PG&E towers in the area.

**Mr. Hammett** stated that the meter he used measured all radiation from all sources within a certain distance. The energy dissipated very rapidly (that is, it went down by a factor of 100 at ten times as far away), so only the very near antennas had a measurable effect. Nextel's antennas would point in different directions and would not cause any higher measurement than any single antenna did. The antennas were very efficient; they focused the energy toward the horizon and did not expend energy in all directions. Cumulative levels were measured.

**Dr. Polson** replied that there was no synergistic interaction between the 60 hz power lines and the 800 mhz frequency from the Nextel transmitters. No scientific literature existed that would suggest that the FCC guidelines were not adequate in protecting the health of the public.

**Chairperson Harrison** asked how an accurate reading was obtained from antennas that were located 111 feet from the ground.

**Mr. Hammet** replied that the calculations were based upon the manufacturer's information. Measurements had been taken at hundreds of sites and they were always conservative, less than what was predicted.

**Commissioner Lorenz** asked if measurements had been taken from any of the neighbors' properties.

**Mr. Hammet** replied that he had visited the site prior to the community meeting, but measurements were not taken of existing conditions.

**Commissioner Sharma** asked if measurements would be lower the further one moved from the tower.

**Mr. Hammet** agreed and stated that was why no measurements were taken. No facility was close enough to the tower location that suggested that high ambient levels were present that could cause negative effects.

A discussion ensued about the location of the home closest to the tower. It was agreed that it was the home to the north.

**Chairperson Harrison** opened the public hearing.

**Venkatesh Krishnamurthy**, Meadows Court resident, stated that he was interested in knowing what the measurements were that were taken near his home. He was also worried about the effect of microwaves.

**K. Balasubramanian**, Meadows Court resident, stated that was a computational physicist who worked at the Lawrence Livermore Lab, taught at University of California Berkeley, had numerous papers and books published and was an advisor to the Environmental Protection Agency. He passed his written concerns to the Commission. They were:

- Cancer caused from long-term exposure from microwave antennas
- SEC guidelines were based upon studies obtained up to 30 years ago
- A 2004 study clearly showed that long-term exposure to microwaves caused cancer
- The frequency of 800 mhz was what made the difference compared to the 60 hz of a normal power line
- Children would pass by the ground equipment on the way to play in the nearby park, which would put them at greater risk than from the antennas
- A general fear by the public could cause a substantial decline in nearby property values
- Measurements of the magnetic field created by just the power lines that he took at his back fence were at the maximum recommended limit, which he believed would be cumulative when the antennas were installed
- The city had not approved similar equipment to be installed in Avril Park, about one-quarter mile away, for the reasons indicated above
- Elders with pacemakers could be affected

**Commissioner Sharma** asked if the penetration of microwaves would be such that they could not cause illness, because of the distance from the antennas to the ground. He pointed out that everyone who had moved into Meadow Court was aware of the power lines and communications antennas that, essentially, surrounded the area.

**Mr. Balasubramanian** replied that it was the frequency of the energy that caused cancer. He believed that the ground equipment would also generate radiation, which would add to the general radiation that everyone was exposed to on a daily basis. Microwave radiation posed a greater risk than power lines. He reiterated his above arguments.

**Ramesh Subranmaniam**, Meadow Court resident, stated that, in his opinion, the property values in his neighborhood had not risen, because of the power lines. He believed that people feared radiation from power lines.

**Ms. Skinner** closed by stating they had been working very hard with the Planning Department to mitigate the visual impact of the structure. The antennas would be painted to match the existing tower structure and the equipment shelter would be constructed of mission-style material.

**Chairperson Harrison** asked if either of the consultants would be comfortable moving their families to the home closest to the where the strongest impact would be.

**Mr. Hammet** replied that he would happily move his family into this beautiful neighborhood.

**Dr. Polson** agreed.

**Commissioner Lydon** asked how many cell sites were located within the city.

**Planning Director Schwob** stated that a map that showed the Nextel facilities in the city was a part of the packet, but he did not know how many total cell phone facilities were in the city.

**Ms. Skinner** stated that there were 20 Nextel facilities within the city.

**Commissioner Lydon** asked if there was any information that would suggest that cell phone antennas were linked to declining property values and children at risk.

**Planning Director Schwob** stated that the city had no data or evidence that would suggest a difference or change, although no study had been performed.

**Ms. Skinner** had not experienced a difference in property values or children at risk near telecommunications facilities.

**Mr. Hammet** stated that the ground equipment did not emit radio frequencies. It was much like computers. The antennas pointed out, not down to the ground.

**Commissioner Lydon** suggested that the Meadow Court residents advance their information to the city in another form, so that it was known to everyone.

**Commissioner Sharma** asked if the applicant would be willing to fence the area to limit exposure to anyone who walked near the equipment and to provide peace of mind for the neighborhood. He asked if measurements would be taken after 30 days. He asked what would happen to the antennas if Nextel no longer was in business or had no further need of them.

**Mr. Hammet** assumed that PG&E had taken adequate efforts to keep people off of their tower. Usually no more security was mandated, because of that presumption.

**Ms. Skinner** stated that Nextel planned to fence in the equipment shelter. She agreed to taking measurements 30 days after installation. Nextel's lease would be with PG&E, and she believed that Nextel was responsible for removing the equipment.

**Commissioner Lorenz** asked how the broadband exposure readings would be shared with the neighborhood. Had any reading ever exceeded the standards and how would it be mitigated?

**Ms. Skinner** replied that the measurements were usually shared with the city. She offered to meet with the city and meet a suitable timeframe for informing the neighbors of the results of the readings.

**Mr. Hammet** stated that he did not believe there would be a mitigation issue at this site. Mitigations usually consisted of placing the antennas high up on a building to restrict anyone from walking up to them.

**Chairperson Harrison** closed the public hearing.

**Commissioner Weaver** would support this project. She disclosed that she did not have a cell phone. She appreciated the neighbors' concerns about the health and safety issues; however, she did not think the result of the measurements would be an issue.

**Chairperson Harrison** stated, in his opinion that the city should look at locating communication facilities on city properties, if feasible, which would add much needed revenue to the city's coffers. He understood the neighbors' concerns, but he would support the application. He suggested adding a condition for an annual review and noticing the property owners within 300 feet of the results of the measurements that were to be taken within 30 days of installation. If the measurements changed significantly during the annual review, the neighbors could be noticed again.

**Planning Director Schwob** clarified that communication facilities had not been approved for fire station buildings, because of the possibility of communication interference. Many city facilities were leased to PG&E where communication facilities had been placed. The Recreation and Parks Department had been reviewing the possibility for leasing space at some of the parks.

**Commissioner Sharma** agreed with the recommendations and suggested that a fence should be installed around the property to alleviate some of the neighbors' concerns.

**Senior Deputy City Attorney Seto** asked if he wanted to fence the entire property or just around the ground equipment.

**Commissioner Sharma** replied that he would leave it to staff, since the issue was the safety of the neighborhood children.

**Planning Director Schwob** clarified that a stucco enclosure would be constructed around the ground equipment. He suggested that a condition be added that the equipment be removed, should the facility become abandoned.

**Commissioner Sharma** summarized the additional conditions:

- Annual certification, along with measurements taken after 30 days of installation
- Removal of equipment if no longer needed
- Fence around property

**Commissioner Lorenz** told the concerned neighbors that he had lived for many years between power lines. The power lines were there when he bought his house and when he sold it, he had to disclose that they were there along with the electromagnetic field measurements. He believed that the power lines influenced the property values rather than the telecommunications antennas that were attached to towers, as voiced by the speakers. He would support the application.

**Planning Director Schwob** summarized the additional conditions, above, and added noticing the neighbors of the results of the measurements taken 30 days after the installation. If measurements increased during the annual review, the neighbors would be renoticed.

**Chairperson Harrison** thanked the neighbors for attending and encouraged them to notify the city if they had any more concerns in the future. He also thanked the applicant for being willing to work with the neighbors.

IT WAS MOVED (SHARMA/LORENZ) AND CARRIED BY THE FOLLOWING VOTE (6-0-0-1-0) THAT THE PLANNING COMMISSION HOLD PUBLIC HEARING;

**AND**

**FIND THE PROJECT IS EXEMPT FROM CEQA REVIEW PER SECTION 15303; NEW CONSTRUCTION OR CONVERSION OF SMALL STRUCTURES;**

**AND**

**FIND PLN2004-00302 IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S EXISTING GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE CHAPTER AS ENUMERATED WITHIN THE STAFF REPORT;**

**AND**

**FIND PLN2004-00302, AS PER EXHIBIT "A" (SITE PLAN, ELEVATIONS, DETAILS), EXHIBIT "B" (CONDITIONS OF APPROVAL), EXHIBIT "C" (PHOTO SIMULATIONS), FULFILLS THE APPLICABLE REQUIREMENTS SET FORTH IN THE FREMONT MUNICIPAL CODE AND THE WIRELESS ORDINANCE (#2213);**

**AND**

**APPROVE PLN2004-00302, AS SHOWN ON EXHIBIT "A", SUBJECT TO THE FINDINGS AND AMENDED CONDITIONS ON EXHIBIT "B".**

The motion carried by the following vote:

AYES:	6 – Chan, Harrison, Lorenz, Lydon, Sharma, Weaver
NOES:	0
ABSTAIN:	0
ABSENT:	1 – King
RECUSE:	0

**Chairperson Harrison** called for a ten-minute recess at 8:55 p.m.

**Chairperson Harrison** called the meeting back to order at 9:08 p.m.

**Item 6. FLOOR AREA RATIO ZONING TEXT AMENDMENT – Select Community Commercial Zoning Districts – (PLN2005-00150)** - to consider a Zoning Text Amendment to increase the maximum Floor Area Ratio (FAR) for properties within both the Niles historic district and the Niles Parking and Improvement Area, or any subsequently established special assessment district(s) that replace the Niles Parking and Improvement Area, from 0.5. to 1.0. And, to increase the Floor Area Ratio in the Mission San Jose Historic District from 0.50 to 0.65. And, to modify the findings required for approving floor area ratio increases above the maximum allowed. A negative declaration was prepared and circulated for this project.

**Planning Director Schwob** stated that this amendment would clarify that only one finding would have to be made, namely, that parking was adequate to meet the need. The parking

ratios within and outside the parking district are different. However, studies showed that parking with the District was highly under-utilized and a higher FAR would create an increased potential for development in the area.

**Commissioner Sharma** asked if the increased FAR assumed there was currently enough parking available in the Mission area. When the college was in session, parking was difficult, so it depended on when the parking study was performed.

**Planning Director Schwob** agreed that parking would have to be provided. In the Mission San Jose Area, a plaza or courtyard design must be included and the parking requirement must be met in order to be allowed the higher FAR.

**Commissioner Lorenz** asked what the current boundaries of the Niles parking district were. How did it happen that some properties were in (or out) of the parking district and was there a fee?

**Planning Director Schwob** replied that the parking district included commercial properties between roughly G and J Streets on both sides of Niles Boulevard and down some of the side streets. Yes, there was a fee for properties included within the parking district. The properties close to town paid a higher assessment to the parking district than the properties further out.

**Chairperson Harrison** opened the public hearing.

**John Weed** stated that he owned 2.5 acres of Community Commercial property in the Niles District and it represented approximately half the property that was outside the parking district. He asked that he be granted the 1.0 FAR, as was recommended in the adopted Concept Plan. In his opinion, the city's desire was to limit the value of the properties that they planned to acquire, of which his property was one. A mechanism must be created so that everyone who wished could be included in the parking district and this most important element of the process had been bypassed. A disparity existed between required parking for properties that were included within the parking district and those that were not in the parking district. The new 234 parking spaces that were to be created had already been allocated for redevelopment projects and the district would still be lacking in adequate parking. The various City parking requirements "needed to be cleaned up." The packets that he had provided to the Commission outlined solutions, such as live/work and self-park developments.

**Bruce Cates** stated that he owned a vacant lot on Niles Boulevard and had been trying to develop it for many years. He believed that raising the FAR to 1.0 was well overdue. He planned to bring a project forward that would be higher than the proposed FAR. He was sympathetic to the previous speaker's situation, which was not an equitable scenario. Any interested property owner should be allowed to be part of the parking district. He believed that some property owners had originally decided to not be a part of the district. When the flea market operated in August, parking somehow accommodated approximately 100,000 people. He was not worried about parking in the future.

**Alan Heyman** stated that he was a business owner in Niles, and he was part of an ad hoc group of commercial property owners who met regularly with the city and others. The majority of this group were in agreement with staff's recommendations.

**Chairperson Harrison** asked if he knew of the general feeling about this item.

**Mr. Heyman** stated that the problem with Niles was that everyone thought there was a parking problem when, actually, there was none. He hoped that someday there would be a parking problem and he believed that it could be addressed at that time.

**Planning Director Schwob** displayed the map of the current parking district, which covered a strip along Niles Boulevard and some commercial side streets. This change had been structured to include properties in the commercial and parking districts, which should provide an incentive for other property owners to join the parking district. A new district was being considered that would encompass not only parking needs but also the future plaza maintenance needs.

**Commissioner Lydon** asked why Mr. Weed's property had been excluded from the parking district. He asked if it was true that Mr. Weed would need 300 parking spaces if he chose to develop his property.

**Planning Director Schwob** did not know why Mr. Weed's property had been excluded. However, he guessed that the originally owner declined to be a part of the district, because it had its own parking. He noted that it was true that the city was looking at acquiring property not in the parking district for a new fire station. Mr. Weed was exploring developing his property for assembly use and the parking standard was approximately one space for every 30 square feet and, according to Mr. Weed, if his property was within a parking district he would not be required to provide the same amount of spaces, which was not exactly true.

**Commissioner Chan** read, "The site capable of providing expanded parking facilities would need to be identified and that the existing parking area would have to be reformulated or replaced so that additional commercial zoned properties would be able to join and pay into the assessment district," and she asked if this would be done.

**Planning Director Schwob** stated that staff had discovered that the existing district had no provisions for amendment, so the district needed to be reformulated to allow additional interested property owners to join. The city was looking at options for amending or expanding the district to include additional properties, along with maintenance funding for the Niles Town Plaza.

**Commissioner Chan** asked what the timeframe would be.

**Manger Connolly** replied that the maintenance of the plaza and additional parking must be in place before construction began. The goal was to include all commercial property owners in a district for parking and maintenance for the town plaza. When the original parking district was created, it was fixed and had no provisions for additional members.

**Commissioner Sharma** asked if Mr. Weed would have an opportunity to join the future parking district. He asked if Mr. Weed's parking could still be restricted, even though he might be a part of a parking district, because of the potential use.

**Planning Director Schwob** answered that the City could require a higher standard if the use required a higher level of parking that was not commensurate with the area norm. However, he did not expect to see that type of new use, because there was little room. Mr. Weed could not currently join the existing district, but the new district would be set up to allow for others to join in the future.

**Chairperson Harrison** closed the public hearing.

**Commissioner Lorenz** stated that he would like to see a mechanism to be put in place as soon as possible so that other property owners, like Mr. Weed, could join the parking district, if they so desired.

**Chairperson Harrison** agreed with Mr. Heyman's comments that a parking problem in the future in the Niles District would be welcomed.



IT WAS MOVED (WEAVER/LORENZ) AND CARRIED BY THE FOLLOWING VOTE (6-0-0-1-0) THAT THE PLANNING COMMISSION **HOLD PUBLIC HEARING;**

**AND**

**ADD MECHANISM TO ALLOW ANY INTERESTED PROPERTY OWNER TO JOIN THE PARKING DISTRICT;**

**AND**

**RECOMMEND THAT THE CITY COUNCIL FIND THE INITIAL STUDY CONDUCTED FOR THE PROJECT HAS EVALUATED THE POTENTIAL IMPACTS THAT COULD CAUSE AN ADVERSE EFFECT, EITHER INDIVIDUALLY OR CUMULATIVELY, ON WILDLIFE RESOURCES AND FIND THAT THERE IS NO EVIDENCE THE PROJECT WOULD HAVE ANY POTENTIAL FOR ADVERSE EFFECT ON WILDLIFE RESOURCES. AS A RESULT, RECOMMEND THE FILING OF A CERTIFICATE OF FEE EXEMPTION FOR THE PROJECT;**

**AND**

**RECOMMEND TO THE CITY COUNCIL THE ADOPTION OF DRAFT NEGATIVE DECLARATION FINDING THAT THERE IS NO SUBSTANTIAL EVIDENCE THAT THE PROJECT WILL HAVE A SIGNIFICANT EFFECT ON THE ENVIRONMENT AND FURTHER FIND THAT THIS ACTION REFLECTS THE INDEPENDENT JUDGMENT OF THE CITY OF FREMONT;**

**AND**

**FIND THAT THE PROJECT IS IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE CHAPTER AS ENUMERATED WITHIN THE STAFF REPORT;**

**AND**

**FIND THE PUBLIC NECESSITY, CONVENIENCE AND GENERAL WELFARE REQUIRE THE ADOPTION OF THIS ZONING TEXT AMENDMENT (PLN2005-00150) TO FURTHER IMPLEMENT THE NILES CONCEPT PLAN AND MISSION SAN JOSE DESIGN GUIDELINES;**

**AND**

**RECOMMEND PLN2005-00150 TO THE CITY COUNCIL IN CONFORMANCE WITH EXHIBIT "A" (ZONING TEXT AMENDMENT).**

The motion carried by the following vote:

AYES:	6 – Chan, Harrison, Lorenz, Lydon, Sharma, Weaver
NOES:	0
ABSTAIN:	0
ABSENT:	1 – King
RECUSE:	0

- Item 8. I-R RESTRICTED INDUSTRIAL AND G-I GENERAL INDUSTRIAL DISTRICT MODIFICATIONS – Citywide – (PLN2004-00156 & PLN2004-00157) – to consider a Zoning Text Amendment (ZTA) to the Restricted Industrial District (I-R) and General Industrial District (G-I) to regulate specific assembly type land uses; to define Assembly Use and Sensitive Populations and to modify the Miscellaneous Uses Section of the Code as it relates to Religious Facilities; and to amend the High Intensity Hazardous Materials Users. This project is exempt from CEQA review, per Section 15061(b)(3), because the zoning district modifications have no potential to cause a significant effect on the environment.**

**MODIFICATION TO STAFF REPORT**

Under **Sec. 8-21604. Zoning administrator permitted uses**, under the letter n, ~~(7) Offices of physicians, dentists, and chiropractors;~~<sup>2</sup> ***should not be struck out.***

**Planning Director Schwob** recalled that a moratorium had been implemented in the industrial districts on assembly-related uses, and it could not be extended indefinitely. A large influx of businesses that had moved towards the industrial areas, because the rents were lower and the vacancy rate was high. Large groups of people were being allowed to assemble near users of hazardous materials and the safety of these groups (day care and recreation providers) could not be assured. For example, an industrial manufacturing facility that provided childcare on the premises had the parents on site. If a need to shelter in place or evacuate occurred, each parent could take responsibility for each child. However, with an independent childcare facility, it would be difficult to evacuate all children in a timely manner, in the event of an emergency. This proposal would not allow assembly-related uses in the General Industrial District, and the heavy hazardous material users would be encouraged to locate in these areas. Assembly-related uses would be allowed with a Conditional Use Permit in the Restricted Industrial District. To counter balance this proposal in the Restricted Industrial District, a restriction that allowed assembly related (and religious facilities in particular) to locate in buildings built before 1992 would be lifted and the restriction that a new building could only be constructed on an eight-acre lot would also be lifted. Not resolved was the "exempt area" along Auto Mall Parkway in the General Industrial District, which would be looked at in the future. He introduced Jay Swardinski, Fire Marshall and Hazard Materials Program Manager.

**Chairperson Harrison** asked why the 500-foot buffer along Auto Mall Parkway could not be left in place and changed, if necessary, after review.

**Planning Director Schwob** replied that a mechanism had not been identified to change it without changing the land use and zoning designations.

**Commissioner Lydon** asked if this change would affect the Saddle Rack.

**Planning Director Schwob** answered that nightclub uses would remain as conditionally permitted, because they did not involve sensitive populations and they had the ability to drive in the case of an evacuation.

**Commissioner Sharma** asked if it would be safe if the adults had to evacuate.

**Planning Director Schwob** stated that if nightclubs were not a part of this amendment, it would become a legal, nonconforming use of the property. Restrictions could be phased in over a period of time to allow for improvements to allow "sheltering in place", for example, for assembly-related uses.

**Commissioner Chan** asked, in Section 3, Sec. 8-22145, what "eleemosynary" meant.

**Planning Director Schwob** replied that was, generally, a nonprofit-type organization or club, such as an Elks Club.

**Commissioner Lorenz** recalled that a sports club had been recommended for such an area. He asked if there was some sort of law where a religious facility could circumvent a zoning restriction.

**Planning Director Schwob** stated that the soccer stadium complex would have been located in the Pacific Commons Restricted Industrial Area, which could have been considered through a use permit.

**Senior Deputy City Attorney Seto** replied that a Federal law called the Religious Land Use and Institutional Persons Act stated that the necessity of someone's religious practices could allow for special accommodations to be made for them in specific land use issues. However,

it would present a high hurdle for a religious institution to claim an absolute reason related to their practice of their religion that required them to locate in an industrial building.

**Chairperson Harrison** opened the public hearing and disclosed that he had spoken to Mr. Norm Bailey, who wrote a letter that had been included in the Commissioners' packets.

**Jack Balch**, 30 year resident and builder/developer, stated that he was speaking as a developer and as a concerned citizen who wanted to see the city improve. He asked that the assembly-related uses be allowed as a Conditional Use, because that use could work on some sites within the General Industrial areas and would allow for flexibility. Most of the land near BART was zoned General Industrial, and he felt it was short-sighted to have constraints on that land. He believed this proposal should be performed along with rezoning and he gave various examples of incompatible uses currently located near retail and R and D businesses.

**Commissioner Lorenz** asked what kind of organizations he recommended that be allowed within the General Industrial area though a Conditional Use Permit.

**Mr. Balch** replied that assembly uses and sensitive populations should not be specifically disallowed.

**Planning Director Schwob** agreed that land use and zoning work needed to be reviewed in the industrial districts, which currently allowed for a hodge-podge of uses. To allow assembly uses would bring the districts back to the pre-moratorium condition and that policy was not in the best public interest.

**Commissioner Lydon** asked what would the impact be, if assembly uses were allowed through conditional use. He feared this might be seen as "chasing business away."

**Planning Director Schwob** recalled making a proposed zoning text amendment to allow a religious facility, which was denied by the Planning Department and the Commission. However, the entire congregation attended the Council meeting, which caused a lot of pressure. The Conditional Use Permit was a foot in the door and the city had never said, "No." The restrictions that would be removed within the Restricted Industrial District were meant to open the entire district for consideration, which would balance not allowing them within the General Industrial District.

**Senior Deputy City Attorney Seto** clarified that allowing assembly uses within the General Industrial District could limit the viability of future manufacturing, R and D, semiconductor uses when the economy began to recover. A property owner could ask for a rezoning of their property to accommodate an assembly-type use, rather than waiting for a general rezoning of their area.

**Chairperson Harrison** noted that he was a board member of nonprofit agency that was interested in bringing more childcare into the area. He agreed that the General Industrial District was not a proper location for childcare. He suggested more "wiggle room" for two neighboring companies who might wish to share childcare within their facilities. He felt that the 500-foot Auto Mall Parkway buffer zone should be addressed as soon as possible, if the Commission approved this proposal. He did not want to see heavy industrial uses along Auto Mall Parkway, as light industrial and commercial uses were more appropriate.

IT WAS MOVED (WEAVER/LORENZ) AND CARRIED BY THE FOLLOWING VOTE (6-0-0-1-0) THAT THE PLANNING COMMISSION **HOLD PUBLIC HEARING**;

**AND**

**RECOMMEND THAT THE CITY COUNCIL FIND THIS PROJECT EXEMPT FROM CEQA REVIEW PER SECTION 15061(B) (3), BECAUSE THE PROJECT HAS NO POTENTIAL FOR CAUSING A SIGNIFICANT EFFECT ON THE ENVIRONMENT;**

**AND**

**RECOMMEND THAT THE CITY COUNCIL FIND THAT PLN2004-00156 AND PLN2004-00157 ARE IN CONFORMANCE WITH THE RELEVANT PROVISIONS CONTAINED IN THE CITY'S GENERAL PLAN. THESE PROVISIONS INCLUDE THE DESIGNATIONS, GOALS AND POLICIES SET FORTH IN THE GENERAL PLAN'S LAND USE AND HEALTH & SAFETY CHAPTERS AS ENUMERATED WITHIN THE STAFF REPORT;**

**AND**

**RECOMMEND THAT THE CITY COUNCIL FIND THE PUBLIC NECESSITY, CONVENIENCE AND GENERAL WELFARE REQUIRE THE ADOPTION OF ZONING TEXT AMENDMENTS PLN2004-00156 AND PLN2004-00157 BECAUSE THEY ASSIST IN PREVENTING ADVERSE IMPACTS ON SENSITIVE POPULATIONS WITHIN THE CITY'S INDUSTRIAL DISTRICTS;**

**AND**

**RECOMMEND PLN2004-00156 AND PLN2004-00157 TO THE CITY COUNCIL IN CONFORMANCE WITH EXHIBIT "A", EXHIBIT "B", AND EXHIBIT "C" (ZONING TEXT AMENDMENTS).**

The motion carried by the following vote:

AYES:	6 – Chan, Harrison, Lorenz, Lydon, Sharma, Weaver
NOES:	0
ABSTAIN:	0
ABSENT:	1 – King
RECUSE:	0

**Chairperson Harrison** called for a ten-minute recess at 10:00 p.m.

**Chairperson Harrison** called the meeting back on order at 10:10 p.m.

#### **MISCELLANEOUS ITEMS**

- Item 10.** **NILES TOWN PLAZA – 37514 Niles Boulevard – (PLN2005-00178)** - to provide comment and direction to staff and the City Council regarding the conceptual design of the proposed Niles Town Plaza, reconfigured public parking area and related site improvements. The project site is located on an approximately 5.25-acre site on the north side of Niles Boulevard between H and I Streets.

**Planning Director Schwob** introduced Luke Connolly, Redevelopment Project Manager, and Keith Gurnee, Principal, RRM Design Group, and Scott Ruhland, Associate Planner.

**Luke Connolly**, Redevelopment Project Manager, stated that the Niles Concept Plan was approved in 2001 and the project was put on hold after one year because the Redevelopment Agency had to do some testing and environmental remediation on the property. The first community meeting after the resumption of the project was held in August 2004 to a heavy turnout. A second community meeting held in November 2004 concluded with strong support for the chosen conceptual design. This concept plan was presented to Council in January and to the Historic and Architecture Review Board in February and was scheduled to be heard by the Parks and Recreation Commission in April and back to the City Council for approval in late April. It would come back to the Planning Commission for a Conditional Use Permit with greater detail.

**Keith Gurnee**, consultant, RRM Design Group, made the presentation that began with three alternatives. The option most liked by the community included:

- Relocation of the train depot and rotated 180 degrees to face the plaza and town
- Construction of concrete stage for future location of the depot, if it could not be relocated immediately, due to funding considerations
- Refurbish freight building as a historic structure
- Create amphitheater in front of the depot as focal point with seating wall that would frame amphitheater
- Perimeter landscaping and decomposed granite and some turf, with broad pallet of local and historic plantings
- Provide vintage-type street furniture and lighting that would echo the street lamps already present in the district
- Creation of a concrete maintenance vehicle pathway that would go between H and I Streets in front of the depot
- Extend H and I Streets to provide additional parking spaces against the town square, as well as against the property on the other side of the street
- Provide diagonal parking on the hill side of Niles Boulevard, which would match current parking across the street
- Create a path that mimicked the railroad tracks
- Install radiating paths, kiosk near the historic flagpole and location of future restrooms

**Consultant Gurnee** continued by stating that this plan was supported by 74 to 100 percent of the people who participated in the workshop.

**Planning Director Schwob** added that the existing Niles Historic Depot Park needed to be addressed, if the depot was moved back downtown. The Recreation and Park Commission would review options at their meeting on April 6<sup>th</sup>.

**Consultant Gurnee** stated that creating the town plaza was most important, even if the depot could not be moved to this site.

**Chairperson Harrison** asked how much would each of the three options cost to build and maintain. How would the depot be moved years after the plaza was constructed without damaging much of the improvements?

**Consultant Gurnee** replied that the option chosen was the least expensive to maintain. Relocating and refurbishing the historic buildings would add cost to all options. Option B was the most reasonably priced to build. He suggested that the depot could be brought in along the H and I Street extensions and brought in from around the side so as to minimize damage.

**Commissioner Lorenz** stated that his business was located in the historic Centerville Depot and it was moved right across the tracks.

**Chairperson Harrison** opened the public hearing.

**John Weed**, local commercial property owner, stated that the concept plan called for a three-acre Plaza site, whereas, this plan encompassed just 1.7 acres. The plaza did not include a Pavillion. In his opinion, the train station buildings should be on the other side of the tracks to provide the function for which it was designed and oriented as it had been historically. The emergency vehicle access lane could be widened three feet to 15 feet, which would eliminate the need for parking at the end of the path for emergencies. The pedestrian underpass should be shown on this plan and the General Plan. He worried that security would be

compromised if grading lowered the train depot site approximately five feet from its historic level, which would cause grading issues to his adjoining property.

**Alan Heyman**, local developer, stated that the town plaza was a very important, integral part of the development of Niles. This was a great plan and well received by the community. Events could be located off the streets, eliminating the need to close them. The property owners had agreed that a maintenance district would have to be formed and "the wheels were moving." HARB gave accolades when it reviewed this plan a few weeks ago. The Niles Canyon Railway would bring people into Niles, which would be a big factor in the future of Niles. He encouraged the City to move this project ahead as quickly as possible.

**Commissioner Sharma** asked if he was saying that this was the work of the whole Niles community and that they were behind it.

**Mr. Heyman** agreed and added that there were few disagreements.

**Bruce Cates**, local commercial property owner, recalled that this process began with a group of residents who met more than ten years ago to try to decide how to make the community better. The Niles Canyon Railroad was a high priority on the list, as it was felt that it was essential for the development and future of Niles. He believed that the train station should be relocated to its original location with its original orientation. He could live with this plan, however. He felt that the freight depot should be left at its original location and that it should not be "overly restored." The Centerville train depot had been restored too much, losing much of its character and he suggested that the Niles depot be left with its old, dented boards, which would maintain the patina of its age. If the outdoor pavilion could be built, it could be rented and used as a source of revenue for the maintenance of the plaza in the future.

**Kevin Doan**, new business owner in Niles, stated that his customers had expressed interest in the new park. He also encouraged the city to move forward as soon as possible, as he believed it would bring more foot traffic into the area and it would help his business.

**Chairperson Harrison** asked the speaker the name of his business.

**Mr. Doan** replied that it was called Salon du Monde.

**Stanley Keiser**, Niles Depot Historical Foundation, stated that his organization was responsible for the maintenance of the depot and had helped with the moving. They would also like to see it moved back as quickly as possible. He asked that their needs be taken into consideration when the plans for the depot were finalized. He stated that he could answer questions about the maintenance of the depot.

**Commissioner Chan** asked about the basement, as mentioned in the HARB minutes of the last meeting.

**Mr. Keiser** stated that their organization used the basement under the depot and hoped that another basement would be constructed when the depot was moved.

**Consultant Gurnee** closed by stating that this plan would be reviewed by the Recreation and Parks Commission, a final plan would be prepared, which would include a cross section of the area, as recommended by Mr. Weed. The final plan would be presented to another community workshop, then it would be taken to the City Council.

**Manger Connolly** added that this was just the concept stage and it was growing more detailed as it moved towards review by the City Council.

**Commissioner Sharma** understood that funding was available for parks throughout the city, but funding for maintenance had undermined most of those plans. He agreed that forming a maintenance district was the best idea and that it should be created simultaneously with the final plan.

**Manger Connolly** agreed that setting a maintenance district up was a key issue. Redevelopment funds were paying for this but could not be used for maintenance. Cleaning up the toxic materials was also moving in tandem with finalizing the design. He reiterated that the Niles Community supported the plan and the hope was that everything shown on the design was within the current budget. If not, the intent would be to phase the project with the plaza being built first and the depot moved back as the next priority.

**Consultant Gurnee** added that at the last workshop, a question was asked if an increase in assessments would be agreed upon to support maintenance costs and 76 percent of the responders answered positively, 5 percent answered negatively, and the remainder declined to state.

**Chairperson Harrison** closed the public hearing.

**Commissioner Sharma** reminded the speaker that a majority of people would state that they support something, but would have second thoughts when told the cost.

**Commissioner Lorenz** stated that the Centerville Depot may have been over restored, but it had great coffee. The funds must be found to move and restore the depot, as he had firsthand experience and one could not underestimate the draw that these historic depots caused. In his opinion, the Niles depot was, by far, the finest example of a depot he had ever seen in the state and in Nevada.

**Chairperson Harrison** stated that this was an unique opportunity to preserve the city's past and to ensure a great future for the area. Lessons were learned from the construction of the plaza next to the Centerville depot, such as making sure that the surfaces were cleanable in this project. He agreed with Mr. Cates that some kind of a "profit center" should be considered.

Information from Commission and Staff:

- Information from staff: Staff will report on matters of interest.

Dates were still being considered for the annual dinner.

- Information from Commission: Commission members may report on matters of interest.
- Request for joint Work Session with City Council.

The Patterson Ranch project had its first community meeting last night and it was very well attended. Multiple joint sessions would probably be available to work with City Council, probably on Tuesdays, on this project as it moved forward, along with the opportunity to bring up other concerns. He would forward this request to City Council.

Meeting adjourned at 10:55 p.m.

SUBMITTED BY:

APPROVED BY:

Alice Malotte  
Recording Clerk

Jeff Schwob, Secretary  
Planning Commission